In the absence of statute, the general rule in the United States is that there is no presumption of negligence on the part of a railroad company for an injury to a non-passenger. *Cooley on Torts,* 2nd Ed., p. 797. The care required by the latter, however, is such as an ordinarily prudent man would exercise under like circumstances. *Phila. R. R. Co. v. Publes,* 67 Fed. 591; *Wilds v. Hudson River R. Co.,* 29 N. Y. 315. But in the application of this rule the courts are somewhat in conflict. Most courts hold that it is sufficient to look in both directions for an approaching train. *Rodrian v. N. Y., etc., R. R. Co.,* 125 N. Y. 526; *Chicago B. & G. R. Co v. Van Pattern,* 74 Ill. 91. The Federal Courts agree that the traveler must stop, also *Dunning v. Bond,* 38 Fed. 813. The fact that the occupant of a vehicle is driven by another does not relieve him. *Durkee v. Delaware & H. Canal Co.,* 88 Hun. 471; *Dean v. Penn. R. Co.,* 129 Pa. 514. Many states hold that where a crossing is particularly dangerous, the degree of care is more imperative. *Thomas v. Delaware L. & W. R. Co.,* 8 Fed. 729. *Wilas v. Hudson River Co.,* 29 N. Y. 315. Missouri formerly held that it was not necessary to "stop, look and listen." *Zimmerman v. Hannibal St. J. R. Co.,* 71 Mo. 476. The weight of authority to-day is that this is not negligence *per se,* but is only evidence thereof. *Terre Haute I. R. Co. v. Voelker,* 129 Ill. 540; *Winslow v. Boston & A. R. Co.,* 11 N. Y. 83.

REORGANIZATION OF MUTUAL INSURANCE COMPANIES.—HUBER V. MARTIN, 105 N. W. 1031 (WISCONSIN).—*Held,* that a statutory scheme for the reorganization of a mutual insurance company and the transfer of its assets, including an accumulated surplus, to its successor, is in conflict with the constitutional inhibition against laws impairing the obligation of contracts and in violation of the provisions of the Federal Constitution as to the equal protection of the laws and the deprivation of property without due process of law.

SECURITIES—SALE OF PLEDGED STOCK—CONTENT V. BANNER.—76 N. E. 913 (N. Y.).—*Held,* that where a stockbroker advances all the money and buys securities for a customer, a written notice to the customer to take up the securities so bought, or supply margins for carrying them, and stating that unless he does so before a certain date the broker will sell the stock for his account and hold him responsible for the amount, is defective, where it contains no statement as to the time or place of the sale, and that, in the absence of any agreement dispensing with notice, a sale on the "curb" constitutes a conversion though the customer has failed to respond on the date stated.

TORTS—MASTER AND SERVANT—EMPLOYER'S LIABILITY TO SERVANT.—BANNON V. N. Y. CENT. & H. R. R. Co., 98 N. Y. SUPP. 770. While one acting as foreman attempted to move a tie across the railroad track, a train struck the tie and injured a member of the crew.—*Held,* that the foreman was then acting as a fellow-servant and that the employer was not liable to the workman for his negligence under employer's Liability Act, Laws 1902, p. 1748, c. 600. Law recognizes that employee may have two duties; those of a superintendent and those of an ordinary workman. *Kellard v. Rooke,* 192 B. D. 585; *Cushman v. Chase,* 156 Mass. 342. If the act is within the duty of a servant, the one doing it, regardless of his rank, is a fellow-servant of the one injured by its negligent performance. *Geoghegan v. Atlas S. S. Co.,* 146 N. Y. 369;

*The Deep Mining & Drainage Co. v. Fitzgerald,* 21 Col. 533; *Fitzgerald v. Houkomp,* 44 Ill. App. 365. A workman cannot recover from his employer for an injury caused by the negligence of the foreman or superintendent in the performance of such work as properly pertains to a servant. *Stockmeyer v. Reed,* 55 Ala. 259.

There is a minority doctrine that although the character of the act may be that of a fellow-servant, the master is liable to the servant for an injury caused by the act of the foreman. *Texas & P. Ry. Co. v. Miss.,* 243 S. W. 328; *Russ v. Wabash Western Ry. Co.,* 112 Mo. 45.

TELEGRAPHS—DELAY IN DELIVERING MESSAGE—WHAT LAW GOVERNS.—WESTERN UNION TEL. CO. V. LACER, 93 S. W. 34 (KY.).—*Held,* that the liability of a telegraph company for delay in delivery of a message sent from one state into another, is governed by the law of the state in which the message is sent, though the mistake which caused the delay was made by an agent of the company in the other state.

The fact that the initial and terminal points of a message sent by telegraph are not in the same state is not material in an action against the company to recover damages for a breach of its common law duty to use proper care to effect a prompt and correct transmission and delivery. *Western Union Tel. Co. v. Mellon,* 96 Tenn. 66. There is a proper distinction drawn between an action brought to recover a penalty and an action brought to recover damages, for a mistake made in another state. If the action is brought to recover a penalty, it will fail as the penal laws of a state do not extend beyond its boundaries. *Western Union Tel. Co. v. Pendleton,* 122 U. S. 347. On the other hand a telegraph company which undertakes to correctly transmit a message to another state is liable in the state where the message is sent for damages for breach of its contract in the other state. *Kemp v. Western Union Tel. Co.,* 28 N. C. 661.

WILLS—EVIDENCE OF UNDUE INFLUENCE—DECLARATIONS OF TESTATOR.—WETZ V. SCHNEIDER, 96 S. W. 59 (TEXAS).—*Held,* that declarations, made before or after the execution of the will, by a testator, are not admissible as evidence of undue influence, or of the truth of the facts stated by him, but only as manifestations of his mental condition. James, C. J., *dissenting.*

This decision points out the distinct line of cleavage between those cases which hold that declarations of the testator are admissible as evidence and the cases which hold that such declarations are not admissible, when the question of undue influence is in issue. On the one hand, such declarations are not admissible for the purpose of proving the truth of the statements they contain, whether or not these statements indicate constraint exercised upon the testator. Under such circumstances, being made before or after the execution of the will, these statements would be mere hearsay evidence. *Westfall v. Wait,* 73 N. E. 1089 (Ind.). This objection fails, however, when such statements were contemporaneous with the execution of the will, for in such case they are of course part of the *res gestæ. Jackson v. Kniffen,* 3 Am. Dec. 390 (N. Y.). On the other hand, declarations made within a reasonable time before or after the execution of the will, are admissible, but only for the purpose of showing the condition of the testator's mind and his susceptibility to the alleged undue influence. *Lucas v. Cannon,* 76 Ky. 650; *Robinson v. Hutchinson,* 26 Vt. 38. And there must be other direct evidence of the exercise of undue influence before such declarations can be received. *In re Hess' Will,* 48 Minn. 504.